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AMO Response To: "Toward Improving The Environmental Assessment Program in Ontario"

Association of Municipalities of Ontario
April 1991

MISSION STATEMENT

AMO unites Ontario's municipalities.

We take pride in promoting, supporting and enhancing strong and effective municipal government.

We provide strategic leadership by:

- developing and effectively promoting responsive quality policy;
- informing and educating governments, the media and the public;
- marketing innovative and beneficial services.

Our elected representatives, municipal officials and association staff form a team which values and respects:

- diversity and local autonomy;
- fairness and equity;
- consultation;
- consensus;
- co-operation.

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EXECUTIVE SUMMARY

This is the Association of Municipalities of Ontario's response to the Discussion Paper that resulted from the Environmental Assessment Program Improvement Project. The response is divided into two parts, the first being an evaluation of the potential effectiveness of the Discussion Paper's recommendations and the second is comprised of selected comments on specific recommendations.

AMO's general position on the Discussion Paper is that it does not go far enough in reforming all aspects of the provincial environmental assessment system and related processes. The Association is particularly concerned that the environmental assessment process be better coordinated with the municipal planning process. The response puts forward four key recommendations which outline the approach that the Association encourages the government to take:

1. *That the government of Ontario commit to a complete reform of the Environmental Assessment Act as well as the system and structures that have developed around the Act. Furthermore, this reform should be undertaken by a body independent of the Ministry of the Environment.*

2. *That the Planning Act and the Environmental Assessment Act, as well as any other pertinent legislation, be amended to ensure better integration of the planning and environmental assessment processes in Ontario.*

3. *That when an undertaking falls entirely within the jurisdiction of a particular planning authority, said planning authority should have responsibility for ensuring the environmental soundness of that undertaking through a reformed planning process.*

4. *That when an undertaking impacts on two or more jurisdictions, the Province should have the responsibility for ensuring the environmental soundness of that undertaking.*

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INTRODUCTION

The Association of Municipalities of Ontario has produced several reports addressing environmental assessment initiatives since the introduction of the Environmental Assessment Act in 1980. These AMO reports fully supported the idea of applying environmental assessment to municipal undertakings but from the beginning expressed concerns about the costs, lengthiness and inefficiencies of the process. These concerns became more acute as the decade progressed and municipalities all over Ontario gained first-hand experience with the environmental assessment process. The most recent AMO report dealing with this issue, "The Waste Management Planning and Approvals Process" (1989), was extremely critical of what the environmental assessment process has evolved into and made some profound recommendations for change.

AMO, among other interested groups, is now being requested to respond to the government discussion paper "Towards Improving the Environmental Assessment Program in Ontario" (to be referred to hereafter as the Discussion Paper). It should be noted that the Association has ostensibly already provided input through representation on the public advisory group formed to assist the task force which produced the Discussion Paper. When the Association first became involved with the EAPIP Public Advisory Group the Province was still committed to the original two-stage review process (Phase 1 was to be a quick remedying of obvious flaws and Phases 2 was a more fundamental reform) and the Association was quite optimistic about the potential of the project. The Discussion Paper is the hybrid product of the collapsing of the two stages into one. The Association believes that this compromise proposal will result in piecemeal changes which cannot hope to resolve fundamental flaws in the system. A thorough review of the entire Environmental Assessment process is still required.

RECOMMENDATION #1

That the government of Ontario commit to a complete reform of the Environmental Assessment Act as well as the system and structures that have developed around the Act. Furthermore, this reform should be undertaken by a body independent of the Ministry of the Environment.

The aim of this response is not to recite the still-relevant concerns that were addressed in past AMO position papers or to re-write the Environmental Assessment Act, but to emphasize the reasons why the municipal sector believes that fundamental reform is necessary. At the same time, the Association recognizes that such a step cannot be taken lightly or immediately. Due to time restrictions, this response only addresses selected parts of the Discussion Paper where we believe our comments might be useful in helping make the process more efficient in the interim. However, the Association would welcome an invitation to take part in further discussions about the details addressed by the Discussion Paper as well as the Association's recommendations.

I WHY FUNDAMENTAL REFORM ?

The local authority issue

One of the most persuasive recommendations made in AMO's "The Waste Management Planning and Approvals Process" was that the environmental assessment process be integrated into the local planning process. The report argued that a formal incorporation of the two processes, where feasible, could resolve many of the system's current problems. Inherent in this recommendation is the realization that the Environmental Assessment Act and the bureaucratic structures and processes that it has spawned would be altered beyond recognition. As it becomes clear that an ever-increasing number of municipalities are or will soon be facing a landfill crisis, and will thus find themselves forced to face the environmental assessment quagmire, AMO is even more determined to pursue a commitment to exploring the option of combining the two processes. This determination was fuelled recently by Premier Rae himself, who, in a speech to the Association's County and Regional Section in Peterborough last October, expressed the view that an integration of the environmental review and planning processes had to be achieved.

RECOMMENDATION #2

That the Planning Act and the Environmental Assessment Act, as well as any other pertinent legislation, be amended to ensure better integration of the planning and environmental assessment processes in Ontario.

In practical terms we would like to see a situation where, when an undertaking is the responsibility of a municipality (or local planning authority if the municipality does not have planning responsibilities), it could be dealt with by the municipality through a planning process which has been amended to include mandatory Environmental Impact Assessment. Thus when a municipality has to consider such undertakings as the building of a road between two subdivisions or the extension of a water line, the Planning Act could operate as an effective mechanism for environmental protection, if the Province clarified what environmental requirements had to be addressed. This would ensure that control of the process would remain primarily in the municipality's hands. The Provincial interest

could be expressed by issuing policy statements under the Planning Act.

This approach would reduce the role of the Ministry of the Environment; especially that of the Environmental Assessment Branch. The Ministry would have an opportunity to comment through the usual government circulation process, and otherwise might direct more of its resources to research and educational activities.

RECOMMENDATION #3

That when an undertaking falls entirely within the jurisdiction of a particular planning authority, said planning authority should have responsibility for ensuring the environmental soundness of that undertaking through a reformed planning process.

Criteria for local undertakings

Recommendation #3 is qualified by the recognition that some internal undertakings might have broader impacts or be too contentious to be dealt with by the local planning authority alone, i.e. incinerators or landfill sites. To handle these situations, the Association proposes that a set of criteria be developed as to which undertakings shall be left to the responsibility of the local authority and which are to be shared with the Province.

Undertakings with inter-jurisdictional implications

The Province would assume a leadership role in the case of undertakings which have inter-jurisdictional implications. While we have recommended that most purely internal undertakings be the responsibility of the planning authority in whose jurisdiction they fall, some undertakings obviously affect several planning authorities, for example, provincial pipelines and highways. In such cases the undertaking would come under a Provincial approval process.

RECOMMENDATION # 4

That when an undertaking impacts on two or more jurisdictions, the Province should have the responsibility for ensuring the environmental soundness of that undertaking.

The process versus the goal of environmental protection

Many parties involved with the environmental assessment process, including the Association's membership have complained that the process has become an end unto itself, to the detriment of the achieving of environmental protection goals. While the aims of the Environmental Assessment Act - to protect, conserve and manage the environment - cannot be argued with, the process that has evolved to implement these aims has actually become obstructive to good environmental planning.

AMO contends that many of these problems originate with the Act itself. For example, we believe that the definition of "the environment" is too broad and perhaps even out-dated. We find it notable that the Environmental Bill of Rights Advisory Committee has seen fit to debate the question of a definition of "environment" rather than accept what is already enshrined in law. The fact is that the Act is over a decade old, a decade in which the concept of environmental protection has been increasingly refined as we learn more about the state of the environment. Tinkering with the environmental assessment process will not suffice to make the Environmental Assessment Act truly applicable in the 1990's.

II THE DISCUSSION PAPER: SELECTED COMMENTS

As stated in the introduction, the Association response addresses those parts of the Discussion Paper where we feel that our opinion can contribute to the interim improvement of the current program.

1. PLANNING AND CONSULTATION

The Assessment Design Document

The Assessment Design Document is conceived as an early mechanism to establish the "ground-rules" for an environmental assessment. The Association believes that there is some merit and potential for this concept, as the more scoping and issue-resolution is done "up-front", the less opportunity there is for the assessment to get mired down later on. However, the Association feels that the decision to create an Assessment Design Document be left up to the municipality. We contend that the municipal planning process is sophisticated enough to evaluate whether an Assessment Design Document is appropriate for a particular undertaking.

Consideration of public or private sector activities

Recommendation 2.8 of the Discussion Paper states that a public proponent must take into account any other public jurisdiction or private sector alternative that is being considered. We do not agree that municipal proponents should have to take into account other public or private sector activity. If this was to be implemented, it is too easy to foresee a situation where a municipality, in the case of a landfill site for example, would have to wait for the assessment of another site in a neighbouring municipality before proceeding.

Intervenor funding

Recommendation 2.14 expresses the idea that proponents be encouraged to provide intervenor funding during the planning and consultation phase of an environmental assessment. This recommendation flies in the face of AMO's consistent position that existing municipal consultation mechanisms established under legislation such as the Planning Act give the public statutory-based opportunity for participation in municipal decision-making and thus municipalities (read municipal tax-payers) need not be considered as providers of intervenor funding. If the Province wishes to establish a system of intervenor funding, it should provide the financial resources as recommended by the Environmental Assessment on Consolidated Hearing Boards.

2. REVIEW AND ACCEPTANCE

The Environmental Assessment Coordinator

Past municipal experience has shown the position of the Environmental Coordinator not to have been very helpful. As a result we doubt whether the expanded role proposed by the Discussion Paper is necessary, particularly if the Assessment Design Document concept is implemented. While proponents do need someone - ideally attached to the Environmental Assessment Board rather than the MOE - to keep their applications on track we feel the proposed position is somewhat grandiose for that purpose. The resources targeted for that position can be put to better use in the area of research, education, and the development of standards.

The Review Process

The Association supports recommendations for the provision of a public review period up front, for the same reasons we support the Assessment Design Document. However we feel it is unrealistic for the Environmental Assessment Branch to expect six months notice for a submission (Recommendation 3.3); two months should be adequate.

While we would like to express our satisfaction that some of the recommendations presented in the first AMO waste management report appear to have been incorporated into this part of the Discussion Paper, we are somewhat surprised that some of the mechanisms being recommended for preparation of reviews at the Ministry have not been implemented previously.

3. APPROVALS

Environmental Assessment Board

The Association notes that the Environmental Assessment Board seems to have anticipated the Discussion Paper's recommendations by recently issuing its own proposals for the reform of the Board's hearing process. While we welcome any attempt to lessen the adversarial nature of the Board's hearings, we do have a comment regarding one of the Discussion Paper's recommendations pertaining to the Environmental Assessment Board. Recommendation 4.12 implies that the Board hearings (which occur at a fairly late stage of the environmental assessment process) be open to additional party participation. We argue that this could only add further delays and should not be necessary if "up-front" public participation is assured.

4. MONITORING

Information and Research

The Association strongly supports the principles underlying the recommendations for improving the monitoring component of the environmental assessment process. In keeping with previous statements, we particularly want to emphasize the need for the Ministry of the Environment to devote more resources to research programs which would enhance the goals of an effective environmental assessment program. We also believe that the Ministry could play a key role in the related area of educational programming.

5. APPLICATION OF THE ENVIRONMENTAL ASSESSMENT ACT

Private Sector Application

AMO supports the idea that a good environmental assessment program be applicable to the private sector. At the same time, the municipal sector shares the provincial commitment to maintain Ontario's economic viability. To ensure that private sector industries are able to establish themselves and grow, the Association recommends that the private sector should have an environmental assessment process which is tailored to its own particular needs. A good example of where this approach seems to be working is the Municipal-Industrial Strategy for Abatement (MISA), which divided industries into separate sectors in order to ensure applicable and effective regulations. This philosophy might be applicable to private sector environmental assessment.

Class EA's

AMO's affiliate, the Municipal Engineer's Association (MEA) has been involved with the Municipal Class EA's from their inception. Recognizing the MEA's expertise and efforts in this area, the Association endorses the MEA's submission on Class EA issues to the Environmental Assessment Advisory Committee. In particular, AMO wishes to emphasize the MEA's support of Recommendation 6.9 of the Discussion Paper, which deals with the need to provide explicit provisions for the creation of Class EA's under the Environmental Assessment Act.

6. BEYOND THE PRESENT PROGRAM

This response has made a clear and definite statement regarding the Association's recommendations for what we see happening "beyond the present program". We feel it is

significant that this chapter of the Discussion Paper does not even suggest the option of fundamental reform. In fact, in describing the various other existing planning-type programs which might lend themselves to integration with the environmental assessment process, neither municipal Official Plans Nor Waste Management Master Plans are even mentioned. Another issue which is not dealt with thoroughly enough is the relationship between the Federal and Provincial environmental assessment processes (Recommendation 7.1). Combined hearings could only work if the dual processes leading up to them are harmonized.

The Association believes that these important omissions underscore the perfunctory nature of the Discussion Paper. Piecemeal changes do not offer a solution to Ontario's waste-management crisis. As existing municipal landfill sites rapidly reach their capacity and the establishing of new sites is held back by out current Environmental Assessment process, AMO will continue to press for a fundamental reform.

LIST OF RECOMMENDATIONS

RECOMMENDATION #1

That the government of Ontario commit to a complete reform of the Environmental Assessment Act as well as the system and structures that have developed around the Act. Furthermore, this reform should be undertaken by a body independent of the Ministry of the Environment.

RECOMMENDATION #2

That the Planning Act and the Environmental Assessment Act, as well as any other pertinent legislation, be amended to ensure better integration of the planning and environmental assessment processes in Ontario.

RECOMMENDATION #3

That when an undertaking falls entirely within the jurisdiction of a particular planning authority, said planning authority should have responsibility for ensuring the environmental soundness of that undertaking through a reformed planning process.

RECOMMENDATION #4

That when an undertaking impacts on two or more jurisdictions, the Province should have the responsibility for ensuring the environmental soundness of that undertaking.

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